IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13652 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAKALCHAND SHIVDAS PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13652 of 2004

MR AV PRAJAPATI for Petitioner No. 1

Mr. Nagesh Sood, AGP for Respondent No. 1-3

MR NEHAL R JOSHI for Respondent No. 4

MR IM BENGALI for Respondent No. 4-4/C

..... for Respondent No. 5

DS AFF.NOT FILED (N) for Respondent No. 5/1-5/9-4/C

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/01/2005

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, learned AGP waives service of Rule on behalf of respondents No. 1 to 3.

Shri MI Hawa, who appears for Shri IM Bengali, learned advocate waives service of Rule on behalf of respondents No. 4/A to 4/D qua the main contesting party. With the consent of the parties, the matter is taken up for Final Hearing today.

2. In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the revisional authority,i.e., Additional Secretary (Appeals), Revenue Department, State of Gujarat, dated 31st May 2004/28.9.2004 in Revision Application No. 4 of 1999 in dismissing the same and confirming the order passed by the Collector, Gandhinagar, dated 7.12.1998 in RTS Revision Application No. 76/1998.

3. It appears from the record that respondents No. 4/A to 4/D had purchased the land in question bearing Survey No. 70/1-Paiki by registered Sale Deed dated 19th September 1995 from the original landowners and necessary Entry in the Record of Rights was also mutated accordingly. It appears from the record that subsequently the very land in question came to be sold by the original landowners to the petitioner by registered Sale Deed dated 16th January 1996 and necessary Entry in the Record of Rights was also mutated accordingly, being Entry No. 2099. Being aggrieved and dissatisfied with the Entry No. 2099 in favour of the petitioner the respondents No. 4/A to 4/D preferred appeals before the Deputy Collector, being Appeals No. 30/97 and 31/97. It appears that the petitioner has purchased the land in question by two separate registered Sale Deeds and as two Entries were made two appeals came to be filed by the respondents No. 4/A to 4/D. The Deputy Collector, Gandhinagar by his order dated 31.12.1997 dismissed both the appeals. Being aggrieved and dissatisfied with the order passed by the Prant Officer, Gandhinagar, dated 31.12.1997 the respondents No. 4/A to 4/D preferred revision application before the Collector, Gandhinagar, which was numbered as Revision Application No. 76/1998. Accepting the submissions made on behalf of respondents No. 4/A to 4/D to the effect that as the land in question was already sold to them prior in time and therefore the original landowner has no authority to sell the land in question again to the petitioner the Collector by order dated 7.12.1998 rejected the revision application and set aside the Entry No. 2099. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Gandhinagar, dated 7.12.1998 in RTS Revision Application No. 76/98 in setting aside the Entry No. 2099 as it was in favour of the petitioner the

petitioner preferred revision application before the Secretary (Appeals), Revenue Department, being Revision Application No. 4/99, which came to be dismissed by the Secretary (Appeals) by judgment and order dated 31st May 2004/28.9.2004, which has given rise to the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri AV Prajapati, learned advocate appearing on behalf of the petitioner has submitted that as the petitioner has purchased the land in question by registered sale deed it was not open for the authority under the RTS proceedings to go into validity of the sale deed and title of the land in question. He has therefore submitted that the Collector has materially erred in setting aside the Entry No. 2099 on the ground that the original landowner could not have sold the land in question to the petitioner after the same being sold to the respondents No. 4/A to 4/D. He has further submitted that as such unless and until the sale deed in favour of the petitioner is set aside by the competent Civil Court the Revenue authority has no jurisdiction and/or authority to set aside the Entry. He has further submitted that as such two other suits are already pending in the Court of learned Civil Judge (SD), Gandhinagar, being Special Civil suit No. 4/1996 and 39/1998 instituted by the respondents No. 4/A to 4/D with regard to the very land in question and the question with regard to validity of the sale deed is yet to be considered by the Civil Court.

5. In response to the notice issued by this Court, Shri M.I. Hawa, learned advocate appears on behalf of respondents No. 4/A to 4/D. He has mainly submitted that in view of the fact that the respondents No. 4/A to 4/D had purchased the land in question by registered Sale Deed dated 19.9.1995 and necessary Entry was also mutated in the Record of Rights the original landowner could not have sold the very land to the petitioner and therefore the sale in favour of the petitioner itself is ab initio void and does not confer any right, title or interest in favour of the petitioner and therefore it is submitted that the Collector had no right in cancelling the Entry No. 2099 which is made on the basis of the sale deed which is non est.

6. Shri Sood, learned AGP has tried to support the order passed by the Collector, Gandhinagar as well as the order passed by the Secretary (Appeals). He has submitted that as it was found by the Collector that the sale transaction in favour of the petitioner itself was

bad in law and non-est the entry in favour of the petitioner could not have been continued.

7. Heard the learned advocates appearing on behalf of the parties. The dispute is with regard to Entry No. 2099. Entry in the revenue record does not confer any right, title or interest in favour of any party, as held by the Hon'ble Supreme Court in catena of decisions. Entry in the revenue record is made only for fiscal purpose for the purpose of recovery of revenue and if any dispute is there with regard to title, then the Revenue authority is required to relegate the party to approach the Civil Court for the purpose of determining the disputes and on the basis of the ultimate outcome, i.e., the decision by the Civil Court, necessary effect is required to be given in Record of Rights. In the present case, as stated above, with regard to the very land in question as well as the sale transaction in favour of the petitioner, two suits are already pending in the Court of learned Civil Judge (SD), Gandhinagar, being Special Civil Suits No. 4/96 and 39/98. Under the provisions of the Bombay Land Revenue Code, more particularly Section 135 coupled with Rule 108, necessary effect is required to be given after the same is adjudicated upon by a competent Civil Court in consonance with the decree that may be passed by the Civil Court.

8. In the aforesaid facts and circumstances of the case, it is directed that the entry which is in existence would be subject to the ultimate outcome of the Special Civil Suits No. 4/96 and 39/98 pending before the Civil Court (SD), Gandhinagar, and until such outcome of the said suits, as agreed by the parties, the parties are directed to maintain status-quo. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.